The Solicitors' Journal

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Current Topics.

PRESERVATION OF DOCUMENTS.

A USEFUL note on the treatment and preservation of damaged documents is published in the current issue of *The Law Society's Gazette*. The *Gazette* for November, 1940, contained some notes prepared by Mr. C. T. FLOWER, Deputy Keeper of the Public Records and Chairman of the Records Preservation Section of the British Records Association, and the present note has been prepared by Mr. HILARY JENKINSON, the Secretary of the British Records Association. In the case of parchment or vellum, when the damage is due to heat only, the documents should be wrapped in a damp (not wet) cloth, long enough to become moist throughout. If necessary the cloth should be re-damped. It should then be possible by levering very gently with a bone or ivory paper knife or "folder" to separate the layers and unfold the document, which should then be aired and dried without heat, and when the drying is nearly complete the document should be lightly pressed. Though a document so treated will in most cases be shrunk, it should nevertheless be legible and not brittle. The gentle levering should consist not only of lifting the flat blade after it has been insinuated between two folds, but also of giving it from time to time a quarter turn. After this process has been begun a small cylindrical wooden bar, rotated, may sometimes replace the folder. When the damage is due to water, a similar process must be begun without delay while the document is still damp. Once more the drying must be by air only and not by exposure to heat. Parchment documents should not be left longer than can be helped in a sodden condition, especially if folded or pressed close to other documents. In the case of paper documents, if they have been touched to any serious extent by flame or by any other means have become actually charred, their treatment, if possible at all, is a matter for an expert. If they have merely been subjected to intense heat they should not be handled until they have re-absorbed a normal amount of moisture from the atmosphere. If they still remain brittle after some time they may require re-sizing, and this will be a matter for an expert. If paper documents are damaged by water they should have their folds or pages carefully separated while damp, and dried as described above. A bound volume may sometimes be sufficiently dealt with by being partially opened and stood in a current of air on its upper or lower edge, not on its fore-edge. Expert advice should be sought in all doubtful cases. Violence should never be used. These hints are timely and will be appreciated by solicitors, who are aware of the difficulty and expense of replacements of valuable documents.

POOR PERSONS' CASES.

ANY lingering doubts as to the efficiency of the gratuitous service rendered by both branches of the legal profession in conducting cases on behalf of poor persons should be effectively dispelled by the encomiums of this work of the profession during 1940, written by the Lord Chief Justice and others, and published in the current issue of *The Law Society's Gazette*. The Lord Chief Justice wrote that he could imagine that conditions must have been difficult during 1940 for those responsible for conducting cases on behalf of poor persons, and it was therefore all the more desirable that the public spirit of those who had done this work should be recognised. Lord Merriman, the President of the Probate, Divorce and Admiralty Division, wrote that he was delighted to see how successfully the work had been carried out in spite of the most adverse conditions. He was glad to notice that the relaxations that it had been possible to make in the practice as regards the settlement of petitions by counsel and substituted service by advertisement had been helpful. Speaking on his own behalf and on behalf of his brother judges, he took the opportunity of repeating publicly that the work was one of the most important public services rendered voluntarily by any learned profession, and His Majesty's Judges had the best reason for knowing how faithfully the duty has been carried out of investigating cases to secure that the parties assisted are deserving. Mr. Justice Wrottesley wrote that the work must become more difficult owing to the increasing shortage of solicitors and their clerks and counsel. With regard to the shortage of counsel, the Attorney-General stated that he was asking the Bar Council to look into it, and Sir CLAUD SCHUSTER, Permanent Secretary to the Lord Chancellor, congratulated all parties on the fact that it had been possible to keep the work going at all. The difficulties referred to will no doubt grow more severe as time goes on, but the new arrangements for the deferment of the military service of barristers, solicitors and clerks in certain cases should mitigate the strain.

DEFENCE (FINANCE) REGULATIONS.

IN a letter addressed on 25th July, 1941, from the Treasury to the Council of The Law Society, and published in the current issue of *The Law Society's Gazette*, the Lords Commissioners of the Treasury invite the attention of members of The Law Society to amendments made to the Defence (Finance) Regulations, 1939, by the Order in Council made on 19th November, 1940 (S.R. & O., 1940, No. 1989), under which the Treasury may direct that any payments to a non-resident (i.e., a resident outside the sterling area), for which permission is asked under Reg. 3c shall be made to a blocked sterling account only. The letter states that this should be read in conjunction with Reg. 3A. A notice was sent to Banks and Bankers on 23rd November, 1940, directing that payments to non-residents in respect of the following would normally be allowed only if payment was made to blocked sterling account : (1) Proceeds of sterling securities drawn for repayment or maturing after the date of the notice or surrendered after the date of the notice for encashment before maturity ; (2) amounts to be distributed following the sale or winding up of companies or the dissolution of partnerships ; (3) legacies and similar payments ; (4) capital payments arising out of settlements ; (5) proceeds of the sale of real estate, furniture, pictures, jewellery, or other movable assets situated in the United Kingdom other than goods imported for sale in the ordinary course of trade. In regard to legacies and similar payments, their lordships do not intend to prohibit transfer to non-resident beneficiaries of sterling securities not otherwise restricted by Treasury order, to which the latter are specifically entitled under the terms of any testamentary disposition or of such sterling securities forming part of an estate, which the personal representatives or trustees of a deceased person may agree to distribute to beneficiaries in lieu of cash. Where, however, the assets of the deceased's estate, which are available for distribution to a non-resident beneficiary consist of cash, the letter states that the personal representatives or trustees must not, under the regulations, make any payment to or on behalf of the non-resident beneficiary, whether by direct remittance to him or to his nominee, or by investment or other disbursement on his behalf in the sterling area, unless permission to make the funds available to him is first obtained. Where such permission is applied for, it will normally be granted only on condition that the payment is made to a blocked sterling account in accordance with Reg. 3E. In all such cases, application for permission, it is stated, should be made through

bankers in the United Kingdom. A notice to banks and bankers dated 18th June, 1941, specifies the securities authorised by the Treasury under Reg. 3E for investment of blocked sterling balances. The Bank of England is prepared, on behalf of the Treasury, to receive letters from solicitors setting out the particulars of the amount due and of the securities in which the beneficiary desires to invest, with a view to authorising the solicitor to make the necessary purchases on the beneficiary's behalf, without passing the funds in question through blocked sterling account. Such purchases must in every case be made on a Stock Exchange in the United Kingdom. Form D will have to be completed in connection with such purchases. The list of securities set out in the notice of 18th June will be found below.

NATIONAL FIRE SERVICE (GENERAL) REGULATIONS, 1941.

NEW regulations made under the Fire Services (Emergency Provisions) Act, 1941 (S.R. & O., No. 1,134), and dated 5th August, 1941, provide for the establishment and organisation of a National Fire Service. The Regional Commissioners are to act, under the direction of the Secretary of State, with the assistance, where necessary, of Chief Regional Fire Officers. The National Fire Service will extend to Great Britain, Northern Ireland and the Isle of Man, and many of its members will constitute Fire Forces in each of thirty-nine specified Fire Areas, others being concerned with central organisation. Each Fire Force is to have a Commander, who will determine the number and position of the stations, depots and personnel, and will be responsible for operations, training, welfare and care of equipment. Reserve stations are to be set up in Great Britain to supplement available fire-fighting forces and to provide training. Members of the National Fire Service may be employed either whole time or part time, and may be discharged by the Secretary of State. Divisional Officers, Column Officers, Senior Area Officers and Assistant Area Officers may be discharged by the Regional Commissioner and, in the case of lower ranks, by the Fire Force Commander. A member of a Fire Force who has not attained the age of sixty may not be discharged by the Regional Commissioner without the concurrence of the Secretary of State, or by the Fire Force Commander without the consent of the Regional Commissioner, except with his consent, or, in the case of a member who has not been transferred to the National Fire Service by virtue of these regulations, during the first six months of his service. Whole-time members may be moved by the Secretary of State from one Fire Force to another or by the Fire Force Commander to a Reserve Station, and part-time firemen may be moved if they consent. Any whole-time fireman may be ordered to go, for any purpose connected with his duty, to any place in the United Kingdom or the Isle of Man and to any ship or vessel at sea. Disobedience to a lawful order and absence without reasonable excuse from any place when it is his duty to be there as a fireman are both punishable offences in the case of full-time firemen, proceedings being taken in the police court. The Second Schedule contains a code of discipline, sanctions for the enforcement of which are dismissal, reduction in rank, stoppage of pay, additional duty, or reprimand. A denial of a charge of breach of discipline gives the accused the right to a hearing by his commander, to call witnesses and cross-examine witnesses, and to be represented by a member of the same Force who is not of equal or superior rank to those hearing the charge. He may, however, on appeal to the Regional Commissioner (by way of rehearing) "have a person selected by himself (who need not be a member of the National Fire Service) to assist him in presenting his case." A whole-time fireman cannot be dismissed except in accordance with the regulations, and a purported resignation is inoperative. The whole of the National Fire Service is now a civil defence organisation for the purposes of the Personal Injuries (Emergency Provisions) Act, 1939, and the Personal Injuries (Civilians) Scheme, 1941.

FURTHER REGULATIONS.

THE regulations also provide for the transfer of fire personnel from local authorities to the National Fire Service as from "the appointed day," which the Secretary of State may fix either generally or in relation to any particular Fire Area. Penalties for breach of discipline already awarded but not yet suffered on the appointed day are to be suffered after that date as if the offence had been against the disciplinary code in the regulations, and pending proceedings may be taken as if the offence in question were one against the regulations, even if it occurred before the appointed day. On the appointed day the statutory obligations of local authorities with regard to fire extinction and the protection of life and property in case of fire are to be suspended for the period of the emergency. Accordingly, it is provided that their rights and obligations against persons transferred to the National Fire Service are to be similarly suspended, subject to regulations under the Fire Services (Emergency Provisions) Act, 1941, for the preservation of pension rights and similar matters. Moreover, as from the appointed day, any contract made by the local authority with any person for the provision by the local authority of the services of their fire brigade is to be treated as frustrated as from the appointed day. There is also provision for the transference of property from local authorities to the National Fire Service. The Third Schedule to the Regulations contains comprehensive provisions as to scales of pay, allowances and conditions of service, and the Fourth Schedule gives the necessary powers to Fire Force Commanders to enter premises for the purposes of obtaining information for the purposes of the Fire Force as well as powers of entry to individual members of the Fire Service for the purpose of extinguishing fires. Further regulations made on 5th August (The Defence (National Fire Service) Regulations, 1941, S.R. & O., No. 1,133), under the Emergency Powers (Defence) Act, 1939, make it clear that any of the foregoing regulations which are not authorised by the Fire Services (Emergency Provisions) Act, 1941, are not thereby *ultra vires*.

PERMITS FOR DRIVING.

THE Emergency Powers (Defence) Road Vehicles and Drivers (Amendment) Order, 1941, made on 17th July (S.R. & O., 1941, No. 1,089), contains amendments of an order made on 1st March, 1941 (S.R. & O., No. 304). These are made under reg. 72 of the Defence (General) Regulations, 1939, which provides, *inter alia*, that in proceedings under s. 4 or s. 77 of the Road Traffic Act, 1930, or s. 31 (1) of the Road Traffic Act, 1934, for driving any vehicle without the proper licence, it will be a defence for the defendant to prove that at the material time the vehicle was being driven under an authority granted by or on behalf of the Minister of Transport. The same rule is made to apply to proceedings taken in respect of a person not licensed to act as conductor of a public service vehicle who has so acted. The order issued in March provides (art. 2 (1) that a Regional Transport Commissioner or a Deputy or Assistant Regional Transport Commissioner, or the Commissioner of Police of the Metropolis, may grant a permit authorising any person holding either a driving licence licensing him to drive vehicles included in Group 1 of the Second Schedule to the Motor Vehicles (Driving Licences) Regulations, 1937, or a National Service Driving Licence issued under the Emergency Powers (Defence) Road Vehicles and Drivers Order, 1939, permitting him to drive motor vehicles of all descriptions, to act as a driver of a public service vehicle, or authorising any person to act as conductor of a public service vehicle. Subject to any revocation or suspension of permits, they were to be valid for two years from the date of issue if issued after 31st July, 1940, and permits in force on 1st March, 1941, were extended for one year from the date when they were due to expire. The new order amends this provision so that permits will now be valid if issued after 1st March, 1941, for two years from the date of issue, and permits in force on that date are still extended for one year from the date when they were due to expire. Under the March order, the holder of a licence to drive or to act as the conductor of a public service vehicle issued by virtue of s. 77 of the Road Traffic Act, 1930, and valid on 31st July, 1940, was authorised for one year from the date on which the licence was due to expire. The July order alters the period to two years and the relevant date from 31st July, 1940, to 1st March, 1941. The amendments came into force on 31st July, 1941.

Defence (Finance) Regulations, 1939: Authorised Securities.

The following list of securities referred to in the Current Topics above is reprinted by kind permission of the Council of The Law Society from the July issue of *The Law Society's Gazette*.

2¾ per cent. Annuities.
2½ per cent. Annuities.
4 per cent. Consolidated Stock.
2½ per cent. Consolidated Stock.
5 per cent. Conversion Stock 1944-64.
3½ per cent. Conversion Stock.
3 per cent. Conversion Stock 1948-53.
2½ per cent. Conversion Stock 1944-49.
2 per cent. Conversion Stock 1943-45.
3 per cent. Defence Bonds.
4 per cent. Funding Stock 1960-90.
3 per cent. Funding Stock 1959-69.
2¾ per cent. Funding Stock 1952-57.
2½ per cent. Funding Stock 1956-61.
Guaranteed 4½ per cent. Bonds (Registered as to Principal and Interest).
Guaranteed 3 per cent. Stock.
Guaranteeed 2¾ per cent. Stock.
Guaranteed Land Stock.
Local Loans 3 per cent Stock
3 per cent. National Defence Stock 1954-58.
2½ per cent. National Defence Bonds 1944-48 (Registered as to Principal and Interest).
2½ per cent. National War Bonds 1945-47.
2½ per cent. National War Bonds 1946-48.
3 per cent. Redemption Stock 1986-96.
3 per cent. Savings Bonds 1955-65.
4 per cent. Victory Bonds (Registered as to Principal and Interest).
3½ per cent. War Stock.
3 per cent. War Stock 1955-59.

Liabilities (War-Time) Adjustment Act, 1941.

(*Continued from page* 328.)

Companies.

Appropriate Court.—Rule 26 specifies the "appropriate court" wherein a company, in serious financial difficulties owing to war circumstances, may apply under s. 1 to the court. Such company may apply to an officer for advice and assistance, if a special resolution that the application be made has been passed. Where the registered office, defined in para. (5) (*a*), is within the London Bankruptcy District, the application should be made to an adjustment officer in London (6, Bedford Square, W.C.1); the High Court is the appropriate court. Where the registered office is outside that district (*a*) apply to the adjustment officer for the county court district where the registered office is situated, if a county court has jurisdiction to wind up the company; that court will be the appropriate court; (*b*) if the High Court only has jurisdiction, apply to an adjustment officer in London; the High Court is the appropriate court; (*c*) if the Palatine Court of Lancaster or Durham has jurisdiction, apply to an adjustment officer in the County Palatine, *or* in London; the appropriate court will be the Palatine Court, *or*, if the application is made to an officer in London, the High Court (r. 26).

Scheme of Arrangement.—Rules 1 to 7, and 8 (1) apply, subject to the modifications in Pt. II. The application should be signed by at least one director and the secretary. The interview may be attended by any officer of the company authorised in writing. When a scheme is approved, the adjustment officer will send the scheme and the written assents of the non-signing creditors to the companies' registrar. He will retain a copy of the scheme and copies of the assents, and the companies' registrar will file the scheme and any assents in the file of the company (r. 27 : Forms 3, 4.

Adjustment Order.—The application may be initiated in the appropriate court under r. 26, and may include the application for a protection order (r. 28).

County Court.—Rules 9 and 10 apply to proceedings under s. 1 in the county court. An application for an adjustment order will be governed by rr. 12 to 24 and r. 25, paras. (5) and (6). Where the court extends or revokes or varies a scheme, the registrar of the court, instead of altering the scheme under r. 10 (5), will send a copy of the order to the Companies' Registrar, who will file it in the company's file. When the court makes a protection or adjustment order, or an order varying or revoking such order, the registrar of the court will send a certified copy to the Companies' Registrar, who will file it in the company's file (r. 29 : Forms 6, 10).

High Court.—In the High Court, proceedings are assigned to the *Chancery Division;* jurisdiction may be exercised by a *judge at chambers* (r. 30). *A debtor's application* for an adjustment order will be made on an *ex parte* originating summons, supported by an affidavit of an officer of the company stating the address of an adjustment officer to whom the company has applied, or that it has not applied to any such officer; it should show that s. 3 (1) (*a*) or (*b*) applies, aind should exhibit a statement of affairs. If an adjustment officer has advised the company to apply for an order, he will report giving his grounds. On taking an appointment, the applicant should lodge at chambers the affidavit with the report (r. 31). A *creditor's application* is by originating summons; the the respondent will be the company. No appearance is required; R.S.C., Ord LIV, r. 4E applies. The supporting affidavit should show that the creditor is entitled by s. 3 (1) to apply, and should state his reasons (r. 32). The judge or master may *refer* the affairs of the company to an *adjustment officer* for report. This report should be sent in duplicafe to the chief master's office (Room 174); the debtor and any proving or secured creditor may, on application at chambers, inspect the report, and, for a fee, obtain a copy. The report is *prima facie* evidence of the statements. A reference to an adjustment officer will not prevent aet reference to any other officer; this, a useful power to be held in reserve (r. 33). At any stage, an application for an adjustment order may be *removed to the Companies' Court* (r. 34). Orders made by the High Court for protection or adjustment (or an order varying or revoking an order for such purpose will be *gazetted*. An office copy will be sent to the Companies' Registrar, who will file it; any person, for a fee, may inspect the orders in the central office (r. 35).

Procedure in Palatine Courts.—Rules 30 to 35 apply with the necessary modifications (r. 36).

General Provisions.

Mutual Credit and Set-off.—The provisions of the Bankruptcy Act, 1914, s. 31, apply as if the protection order were a receiving order (r. 37).

Valuation of Future Liability.—It is sufficient to state the particulars of a future liability without estimating its present value, unless the court or an adjustment officer thinks that an estimate is necessary; in such case, it may be directed at any stage of the proceedings (r. 38).

Valuation of Security.—If a secured creditor claims that his security is less than the debt, and wishes to prove for the balance, he should submit, with his proof, an affidavit of a qualified valuer stating the price the property would then realise by public auction without reserve. The officer or registrar may accept this price as the value, or may make a further investigation by independent opinion; again, a useful and a necessary form in reserve: an expert's opinion does not bind, but, like other evidence, must be weighed. Where a secured creditor has been paid a dividend for the balance which he proved, and the valuation is later altered, the dividends shall be adjusted, but the other creditors will not be required to repay amounts already paid. Where a secured creditor has been paid, and the security realises more than the valuation, he must pay into court the difference between the dividend paid and the dividend which would have been paid if the property had been valued at the amount realised. The money paid in will be paid over to the creditors in just proportion (r. 39).

Disclaimer.—If an adjustment order provides for disclaimer (*a*) the rights, interests and liabilities of the debtor in the property disclaimed will be *determined* from the specified date; if the property is vested in a trustee, he will be discharged from the specified date, under the Bankruptcy Act, 1914, s. 54 (2); (b) s. 54 (6) applies, substituting "the debtor" for "the bankrupt," and the date of the filing of the application for an adjustment order, for the date of the filing of the bankruptcy petition (r. 40).

Postponement of Claims.—Where the husband or wife of the debtor is a creditor or future creditor in proceedings under s. 3 of the 1941 Act, the court may apply s. 36 of the Bankruptcy Act, 1914, and direct the postponement of the claim to a dividend (r. 41).

Subordinate Adjustment Officer.—An adjustment Officer may authorise his subordinate to perform any of his functions (r. 42).

Proceedings in private.—Proceedings before an adjustment officer are in private (r. 43). He has power to administer oaths and take affidavits (r. 44). One adjustment officer may act for another, at his request, where this course appears more convenient (r. 45).

Fees of Adjustment Officer.—Any scheme should provide for "special expenses"; but if there would be hardship, they may be *remitted*. The officer may assess a *fee or percentage* and provide for its payment into court (r. 46).

Reference to any Adjustment Officer.—Where proceedings under the Act are pending, the court may refer any question for investigation and report to *any* adjustment officer, whether attached to that district or not (r. 47).

Service of Documents.—Documents will normally be served in accordance with Ord. VIII. r. 39, of County Court Rules (r. 48).

Recommendations as to Court Fees.—The adjustment officer, in his report, will normally include a recommendation as to fees or percentages, which, in his opinion, would be reasonable. He *may* include a recommendation as to the manner in which payment should be provided for. This is a salutary rule; the officer will have seen all the parties; he will thoroughly have investigated the affairs; usually he will be the best judge of what fees are reasonable (r. 49).

Costs under s. 1.—In proceedings under s. 1—"for advice and assistance," with a view to an "equitable and reasonable scheme of arrangement"—a debtor, or creditor, or future creditor, may, *with leave* of the adjustment officer, be *represented by solicitor or counsel*—but why with leave? Is leave to be refused? If so, on what grounds? And if leave will not be refused, why should leave be required? In any event, no provision will be made in the scheme for payment to any such creditor of costs out of the assets; he must pay the costs himself. Where a *solicitor* acts for *any person* before an adjustment officer under s. 1, County Court Scale B will apply to the costs as between solicitor and client (r. 50).

Costs of Proceedings in Court.—In an application for an adjustment order, a creditor applying may be *represented* by solicitor or counsel; if an order is made, provision may be made for the applicant's costs. Where the *debtor* applies, and a creditor is represented, the creditor will not get his costs out of the debtor's assets unless the court "in special circumstances" otherwise orders. If the creditor's costs *are* to be paid out of assets, the costs will, if practicable, be ascertained *before* the terms of the order are settled. Where the court directs one person to pay the costs of another, or that costs shall come out of the assets, the court may fix a *lump sum*, or *percentage of the assets*, or direct *taxation on a specified scale*. Failing assessment or other directions, the costs will be taxed on County Court Scale A. This, over *tions*, the court hos *complete descretion;* it may have regard to the *conduct* of the debtor or creditors in s. 1 (r. 51).

Removal from County Court to High Court.—Procedure to remove proceedings to the High Court is by originating summons in the Chancery Division. No appearance is required (R.S.C., Ord. LIV, r. 4E) applies, Where proceedings have been removed, the affairs of the debtor, or any question arising, may be referred to the adjustment officer concerned, or any other officer; or any other directions may be given. Where the High Court makes a protection or adjustment order, or an order varying or revoking a protection or adjustment order, the order will be gazetted and may, for a fee, be inspected. If the debtor is an individual or

a firm, the Registrar of Deeds of Arrangement will register the order and enter the particulars gazetted in the adjustment register. If the order relates to a company, the proper officer will send an office copy to the Companies' Registrar, who will file it on the file of the company (r. 52).

Searches in Adjustment Register.—For a fee of 1s. *any* person may search for a debtor's name in the adjustment register. Apply to the Registrar of Deeds of Arrangement by prepaid post, sending the fee and a stamped and addressed envelope (r. 54).

Meaning of "Supply" in the Consumer Rationing Order.

THE Consumer Rationing Order, 1941 (S.R. & O., 1941, No. 701), best known for its restrictions on the right to buy clothes, has thrice been amended. Each amending order might fairly be said to represent a number of official afterthoughts. Among the second group (the Consumer Rationing (No. 3) Order, S.R. & O., 1941, No. 1011, of 15th July) we find :—

"1 (13) After sub-paragraph (*g*) of paragraph (1) of Article 13 there shall be inserted the following sub-paragraph :—

"'(*gg*) "Supply" includes supply in pursuance of a contract of sale, sale or return, hire, hire purchase, barter or a contract of any other description and supply as a gift.'"

"Supply" is used, as a verb or as a noun, in every article of the Order except one, but what might be called the main provisions are those of arts. 1 (2), 2 (2) and 3. Articles 1 and 2 deal with retail and wholesale trade respectively, and in each case the second paragraph runs : "No trader shall supply any rationed goods otherwise than against the surrender of the appropriate number of coupons and in accordance with the provisions of this Order." Article 3 says : "A person shall not acquire rationed goods from a trader in circumstances in which the trader is prohibited from supplying them to him."

It seems unlikely that any part of art. 13 (1) (*gg*) will cause any difficulty except the words "contract of any other description." "Sale" is the usual method of supplying the subject-matter; "sale or return" was very likely inserted to anticipate evasion by undue exploitation of that form of transaction known in the trade as "cash appro." Much the same may be said of "hire," "hire purchase" and "barter"; at first sight—leaving the subject of interpretation for a moment—the inclusion of "hire" seems to hit several types of business (theatrical costumiers, hirers of bathing costumes, and those concerned with the hire of formal dress for formal occasions) hard, but in fact they are not affected, for, though they are "traders" within the meaning given in art. 13 (1) (*m*) ("a person carrying on in the United Kingdom the business of supplying any rationed goods whether or not he carries out any process in the manufacture of them"), *ib.* (*f*), defining "rationed" goods, concludes : "but shall not include secondhand goods or goods of descriptions specified in the Second Schedule hereto." As to "supply as a gift," this, in view of the definition of "trader" just mentioned, comes rather as a surprise, and one wonders why, if those carrying on business, etc., are to be credited with benevolence, there is no reference to loans without consideration.

What kind of contract can have been contemplated by the Board of Trade when it used the words "contract of any other description"? In seeking the answer, it is, I think, right to have regard to the following considerations : the nature of the powers exercised; the circumstance that this particular paragraph does not profess to give a definition, the operative word being "includes" (all the others use the word "means"; and the *ejusdem generis* rule).

The relevant power is that conferred by reg. 55 of the Defence Regulation by which (1) a competent authority, so far as appears to that authority to be necessary . . . in the interests of the defence of the realm or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, may by order provide (*a*) for regulating the . . . distribution, disposal, acquisition, use or consumption of articles of any description . . ." Which regulation itself depends for its validity on s. 1 (1) of the Emergency Powers (Defence) Act, 1939. The subsection in question will be found to contain the very words "the defence of the realm . . . life of the community" set out above.

There can be little doubt that if the Board of Trade could be and were called upon to justify the Consumer Rationing Order, its case would be that a reduction in the consumption of cloth was necessary in order that more vital supplies and services might be produced and performed, and such reduction in turn necessitated the regulating of distribution, disposal, acquisition, use and consumption of cloth. And that it was not enough to regulate sale : there are other ways of distributing, disposing of and acquiring goods, all of which have the undesired effect upon use and consumption and thus upon production.

This consideration, plus the operation of the *ejusdem generis* rule, invites the conclusion that the noun "supply" in the Consumer Rationing Order means the furnishing of a person with necessaries *for use*, the verb bearing a corresponding meaning. Further support for this proposition is to be found in the use of the word "acquire" as a correlative, e.g., in art. 3, set out above, or in the definition of "retail customer" in art. 13 (1) (*g*), ". . . in relation to the supply of any rationed goods means a person who is not acquiring those goods for the purpose of his business as a trader . . ."

The owner of a fur coat who pawns it or has it stored (and some knowledgeable people pawn such garments not with the object of raising money but because they will be well looked after, the interest which the pledgee is entitled to demand amounting to less than what warehousemen would charge) might, if it were not for the other considerations, be said to supply the coat to the pawnbroker or storekeeper, who might be said to acquire it under a contract of some description other than of sale, sale or return, hire, hire purchase, or barter; but such contracts do not make for increased consumption. Two kinds of contracts which would, it is submitted, be covered by the words "contract of any other description" in their context would be a lease granted to a manufacturer of textiles in consideration of a supply of cloth ("And the rent may as well be in delivery of Hens, Capons, Roses, Spurres, Bowes, Shafts, Horses, Hawkes, Pepper, Comine, Wheat . . . and such like; as in payment of money" : Coke Inst., s. 213), or an agreement for rendering services in consideration of a supply of clothing (made, e.g., by a reader of this paper retained by his tailor). Neither of these arrangements is covered by "a contract of sale, sale or return, hire, hire purchase, barter," but rationed goods are supplied in pursuance of a contract of some other description, they are supplied for consumption, and are within the purview of the Consumer Rationing Order.

Correspondence.

MOBILISED SECURITIES: APPORTIONMENT.

Sir,—With reference to your "Conveyancer's Diary" of 19th July (*ante*, p. 304), I would remark that so far as funds in court are concerned, the only apportionment that takes place in the administration of a trust fund in Chancery is on the life-tenant's death. Where there is merely a change of trust investments by sale and reinvestment, or where the change involves sales or purchases of trust securities, no apportionment takes place as between life-tenant and remainderman.

The reasons for the rule are :—

(1) The practical inconvenience of making the calculations to determine what is due to the life tenant.

(2) The rule works both ways, i.e., if the life-tenant is entitled to part of the sale money when the stock is sold cum-dividend, something should be taken from the tenant for life when the stock is purchased cum-dividend.

As regards the example of the recent acquisition of India 4½ per cent. Stock, I think the proper view is to consider the acquisition money as being wholly capital. This view is supported by the fact (1) that no income tax is deducted from any part of the acquisition money; and (2) that where the stock has been surrendered to the Treasury after the closing date for the payment of the current dividend, and where consequently the Treasury has deducted from the acquisition price the *gross* amount of the said dividend, a refund will be made by the Treasury of the amount of the income tax deducted from the dividend paid to the stockholder after the date of the Acquisition Order, upon surrender of the relative income tax certificate.

This means that whether the owner vests his security in the Treasury within the prescribed time or after the ex-dividend date, he receives the full acquisition money, no more and no less.

It would appear, therefore, that so long as the acquisition money is undifferentiated as between capital and income, there is no part of the acquisition money that can be apportioned.

W. DACK,
Chief Accountant,
Supreme Court Pay Office.

Royal Courts of Justice,
London, W.C.2.
29th July.

Parliamentary News.

ROYAL ASSENT.

The following Bills received the Royal Assent on the 7th August :—
Appropriation.
Landlord and Tenant (War Damage) (Amendment).
National Health Insurance Contributory Pensions and Workmen's Compensation.
Pharmacy and Medicines.
Provisional Orders (Marriages) Confirmation.
War Damage to Land (Scotland).

HOUSE OF COMMONS.

India and Burma (Postponement of Elections) Bill [H.L.].
Read First Time. [7th August.

A Conveyancer's Diary.

LIABILITY FOR FLOODS.

THERE have recently been two rather interesting cases in which the courts have dealt with the liability of owners and occupiers of land for the flooding of their neighbours' premises: they are *Sedleigh-Dinfield* v. *O'Callaghan* [1940] A.C. 880, and *Thomas and Evans, Ltd.* v. *Mid-Rhondda Co-operative Society, Ltd.* [1941] 1 K.B. 381. In both cases the flood had occurred because of excessive rainfall (not amounting to Act of God), and in both cases the flood had damaged the plaintiffs' land and because of something that had taken place on the land of the defendants. But as the defendants were liable in one case and not in the other, a comparison may be profitable.

In the *Sedleigh-Dinfield case* the plaintiff was owner and occupier of a house and garden at Mill Hill. North of his premises was a piece of land owned or occupied by the defendants. Between the plaintiffs' and defendants' land. Lord Mangham said that it of the hedge nearest the plaintiffs' land was a ditch. The ditch was treated for the purpose of the proceedings as being part of the defendants' property, because of the well-known presumption about boundaries, which in this case was reinforced by evidence that the ditch had been cleaned out from time to time by persons acting on behalf of the defendants. The ground sloped down from the defendants' premises to the plaintiffs', so that when the ditch overflowed the flood went into the plaintiffs' garden. Further down the ditch, below the defendants' land, was a piece of land in different ownership. In 1934 the owner of this piece of land arranged with the county council that they should substitute a culvert, fifteen inches in diameter, for the ditch, the culvert being carried a foot or two into the part of the ditch which ran between the plaintiffs' and defendants' land. Lord Mayham said that it was clear that the county council trespassed in so acting, but the defendants had done nothing about it. It would have been proper to put a grating slightly upstream from the mouth of the culvert to prevent sticks and leaves getting into it and blocking it up. Actually the necessary grating was placed right in the mouth of the culvert, so that, when the critical moment arrived, the culvert was choked up. For nearly three years after these works were finished the agents of the defendants continued to clean out the ditch from time to time. Eventually, in April, 1937, there was a heavy fall of rain, and the water, unable to flow down the choked culvert, flooded the plaintiffs' land. Branson, J., and the Court of Appeal both held that the defendants were not liable, on the ground that, though the state of the ditch might be a nuisance, and though the nuisance was on the defendants' land, the nuisance was caused by the act of a trespasser, the county council, for which the defendants were therefore not responsible. This decision was reversed in the House of Lords (Mangham, Atkin, Wright, Romer and Porter, L.JJ.). The main point is stated by Lord Mangham at p. 894 as follows: It is agreed "that an occupier of land is liable for the continuance of a nuisance created by others, e.g., by trespassers, if he continues or adopts it": there had been no satisfactory definition of "continues or adopts." "In my opinion an occupier of land 'continues' a nuisance if with knowledge or presumed knowledge of its existence he fails to take any reasonable means to bring it to an end though with ample time to do so. He 'adopts' it if he makes any use of the erection, building, bank or artificial contrivance which constitutes the nuisance. In these sentences I am not attempting exclusive definitions." On these principles the defendants' liability was apparent, as they had not only tolerated the nuisance for three years, but had during all that time used the culvert for getting rid of water from their property.

The ground for the decision was, therefore, that the arrangement of ditch, grating and culvert was a nuisance, for which the defendants were liable, although it had been caused by a trespasser, because they had continued and adopted it. Lord Maugham was careful to state (p. 888) that the case was not one to which the rule in *Rylands* v. *Fletcher* had any application, because the use to which the defendants' land was put was a normal one and not "some special one . . . bringing with it increased danger to others." He further explained (p. 888) that an owner of land who, for his own convenience, diverts or interferes with the course of a stream "must take care" that the new course is adequate to prevent mischief from an overflow on to his neighbours' land and that he will *prima facie* be liable if such an overflow does occur. The words "must take care" indicate a duty of care, and usually the tort that occurs when such a duty is left unfulfilled is not nuisance, but negligence. But, whatever the juridical nature of the case, the substantial point is that there is such a duty, and, as Lord Maugham held (p. 889), it is not confined to dealings with natural streams, but applies equally to such artificial watercourses as the ditch here discussed.

In the *Thomas and Evans case*, a wall had, many years ago, been erected along the side of a river to prevent flooding. It was so erected on the land of A., a riparian owner, by the local authority acting under A.'s grant. A. covenanted with the local authority to pay a proportion of the cost of building the wall (which was designed to protect his land and the highway), and not to pull down or remove the wall without previously erecting on the land buildings which would have a similar effect in preventing floods. The defendants were tenants claiming under the successors in title of A. They wished to make certain changes in the premises which would involve the old wall being pulled down and another one substituted, and on 31st March, 1939, they obtained consent to their plans both from their lessors and from the local authority. (It would be interesting to consider whether A.'s covenant not to pull down the wall without having first built another was enforceable by the local authority against his successors in title. In fact, the defendants took no chances.) The defendants went ahead with the work, but did it in such a way that when, early in July, there was abnormal rain and the level of the river rose, the water came through a gap and flooded, *inter alia*, a piece of land belonging to the plaintiffs.

It will be observed that this is the first point at which the plaintiffs or their land figure in the story. They were not parties to any of the arrangements that had been made. In fact, they had undoubtedly benefited by the existence of the wall, but that was purely fortuitous. They were plainly volunteers who had got an uncovenanted benefit, and they could plainly have no case *ex contractu*. They sought, therefore, to rely on tort. They put up, but had to abandon, the entirely untenable point that leaving gaps in a wall was a non-natural user, bringing the rule in *Rylands* v. *Fletcher* into effect: finally, they tried to rely on the same sort of point as had determined the *Sedleigh-Denfield case*. But, as Lord Greene pointed out, they could not rely on negligence, as they could show no duty imposed on the defendants. He also said that he found difficulty in following their conception that the gaps in the wall were artificial works directing the stream.

With that point we come to the real distinction. It was clear in the *Sedleigh-Denfield case* that there had been erected in the watercourse works which interfered with the flow of water down the watercourse. In the *Thomas and Evans case* works had been erected *beside* the watercourse, which, so far from interfering with the flow of water in the watercourse, were designed to secure, and had for years in fact secured, that the water should flow down the watercourse at periods of abnormal rain, instead of flowing elsewhere. Once this point is grasped, it is plain that no one could have a claim in tort for damage occurring through floods at a time when the works were not in their usual condition of efficiency. For a man may embank his land to prevent the entrance of flood water (see *Gerrard* v. *Crome* [1921] 1 A.C. 395) even if his act causes a flood on his neighbours' land. (A similar point was decided in connection with a swarm of locusts in *Greyvenstein* v. *Hattingh* [1911] A.C. 355). *A fortiori*, therefore, he cannot be liable for inadequately protecting his own land against floods even though his neighbour also suffers. But if he interferes with the normal bed of a watercourse he does so at his peril, as was decided once more in *Sedleigh-Denfield* v. *O'Callaghan*.

Rules and Orders.

S.R. & O., 1941, No. 1047/L. 21.

SUPREME COURT, ENGLAND—PROCEDURE.

THE RULES OF THE SUPREME COURT (No. 4), 1941.

DATED 17TH JULY, 1941.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by Section 1 of the Administration of Justice (Emergency Provisions) Act, 1939*, and of all other powers enabling me in this behalf, and with the concurrence of two other Judges of the Supreme Court, do hereby make the following Rules under Section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925†:—

1. During the period from the 18th August to the 3rd October, 1941 (being the period during which the arrangements directed by the Rules of the Supreme Court (No .2), 1941‡, will be in force), the Court of Appeal may, if on any special grounds they consider it desirable so to do, deal with any application or matter with which they could have dealt if that period fell within the sittings directed by Order LXIII, Rule 1.

2. These Rules may be cited as the Rules of the Supreme Court (No. 4), 1941.

Dated the 17th day of July, 1941.

Simon, C.

We concur,

Caldecote, C.J.

Wilfrid Greene, M.R.

* 2 & 3 Geo. 6. c. 78. † 15 & 16 Geo. 5. c. 49.

‡ S.R. & O., 1941, No. 839.

High Court Judges and leaders of the Bar are among the air raid wardens at the Temple wardens' post, which has been reopened in its old quarters.

Lieut.-Col. William Arthur Ives Anglin, M.C., Assistant Judge Advocate General at Canadian Military Headquarters, a Member of the Bar of the Province of New Brunswick, has been called to the Bar by Gray's Inn.

Landlord and Tenant Notebook.

PAYMENT OF RATES AND TAXES AS CONSIDERATION.

A RECENT "Notebook" had occasion to refer to the sub-letting at a loss of town houses by evacuated tenants. Akin to this phenomenon is the letting by evacuated owners to "anyone who will pay the rates and taxes." What is the effect of negotiating such an agreement?

The only authority I have been able to find which is at all in point is *Re An Order of the Borough Justices of Richmond, Surrey* (1893), 10 T.L.R. 68, and this at first sight suggests the answer "not a tenancy at a rent, anyhow." The proceeding was a motion for a rule *à certiorari*. The applicant, it appeared, had agreed to occupy the ground and top floors of a house, to keep the rest (used as a mission chapel) clean, and to pay the rates and taxes on the whole. The amounts so paid had, he deposed, never been less than £28 in any year; but when the owner took proceedings for possession under the Small Tenements Recovery Act, 1838, the respondents, though their jurisdiction is limited to cases in which premises are let at a rent not exceeding the rate of £20 a year, had entertained the summons and made an order for possession which actually recited that no rent at all was payable under the agreement. Wills and Wright, JJ., endorsed this view, the former adding, by way of reason, that there would have been no possibility of distraining; the latter, by way of alternative basis, that the payment of rates other than those for which the applicant would be liable in any event would not exceed £20.

The ground of the decision is, therefore, that there was a demise, but no reddendum. Undoubtedly, there can be a tenancy without a rent; if necessary, the tenant's implied covenants can be relied upon to satisfy any requirement of consideration. Also, monetary payments constituting consideration need not be rent; a tenancy agreement can, for instance, provide for the payment of a single sum.

But some criticism can be offered of the decision. The report is not a full one, but it is reasonable to suppose that the justices and the learned judges had in mind the characteristics of "rent," which has been defined as "a certain profit issuing out of lands and corporeal tenements." This definition is referable to passages in "Coke on Littleton," Bk. II, c. 12, s. 213—"Rent service is where the Tenant holdeth his land of his Lord . . . by certaine rent."—in which the learned author explains that "rent" "is as much to say that the tenant or lessee shall pay so much out of the profits of the lands," and in another note: "For the rent must be certaine, or which may be reduced to a certainty." And the section itself goes on to declare: ". . . and if rent service at any day that it ought to bee payed, bee behinde, the Lord may distraine for that of common right."

The above section and notes are headed "Of Rents." But some other propositions found in text-books are culled from a different part of Coke's work, namely, Bk. I, c. 7, s. 58: "Tenant for terme of yeares" described therein in this way: ". . . where a man Letteth Lands or tenements to another for terme of certaine yeares . . . and when the Lessee entreth by force of the Lease, then is hee tenant for terme of yeares, and if the Lessor in such case reserve to him a yearely Rent upon such a Lease, hee may chuse for to distraine for the Rent in the tenements letten. . . ." In the notes which follow, we are taught: ". . . a rent must be reserved out of Lands or Tenements, whereunto the Lessor may have resort or recourse to distreine . . . and, therefore, a rent cannot be reserved . . . out of any incorporeall inheritance. . . ."

The above indicates the source of the propositions that a rent must be certain and enforceable by distress; incidentally, the "if" in "if the Lessor in such case reserve to him a yearely rent" implies that there can be a tenancy without a rent.

Now the report of the decision mentioned shows that the court considered that there was no rent, but it is not clear whether the reasoning was that the requirement of "certainty" was unsatisfied. In view of the "or which may be reduced to certainty" and of other authorities, I doubt whether such an objection would be tenable. Part of the consideration was services, namely, the cleaning of the building; but another note to Coke's s. 213, referred to above, says: "And the rent may as well be delivery of Hens, Capons . . . or other profit that lyeth in render, office, attendance, and such like: as in payment of money." There are, indeed, a number of reported cases in which reservation of rent in kind or by service has been held to be valid; and if the framers of the Small Tenements Recovery Act, 1838, did not contemplate such a possibility, the practice being obsolescent, the applicant might not only have said that that was not his fault, but have mentioned at least three decisions since 1838 in which such a reddendum was construed, or such consideration construed as a reddendum: *Doe d. Edney* v. *Benham* and *Same* v. *Billett* (1845), 7 Q.B. 976 (sweeping church; ringing church bells); *Marlborough (Duke of)* v. *Osborn* (1864), 5 B. & S. 67 (team work). As to the rates, if the objection were that the amounts would fluctuate, there is plenty of authority to show that that is met by Coke's "or which may be reduced to a certainty." The most recent case is, I believe, *Re Knight; ex parte Voisey* (1882), 21 Ch.D. 442 (C.A.) (mortgagor attorns at monthly rent equal to whatever due to building society by way of subscription, fines, interest, etc., under rules), in which Brett, L.J., said: "But the rent is certain if, by calculation and upon the happening of certain events, it becomes certain and . . . the mere fact of rent being fluctuating does not make it uncertain."

Wills, J., said, as we have seen, that there would have been no possibility of distraining. It is arguable whether Coke actually goes as far as to make this a test of rent; but assuming that he does, it seems that the learned judge may have overlooked one factor which ought to have been taken into account. For it is true that a modern and certificated bailiff would probably be puzzled if instructed to levy a distress against a tenant whose default consisted in failure to clean a building; but then Littleton and Coke would have been greatly astonished to hear that a distrainor could proceed, if necessary, to sell what he had seized. Before 2 & 3 W. & M., s. 1, c. 5, there was no such right. Blackstone in his Commentaries (III, 14) remarks: "although such a distress put the owner to inconvenience, and was therefore a punishment to him, yet if he continued obstinate and would make no satisfaction, it was no remedy at all to the distrainor"; but, be that as it may, it does not seem accurate to say that the landlord in *Re An Order of the Borough Justices of Richmond, Surrey*, could not have distrained.

Wright, J., appears to have visualised an apportionment of the rates and to have proceeded on the assumption that in so far as the tenant undertook to pay what was due in respect of the top and ground floors, the agreement was *nudum pactum*. The point is of some importance in relation to the present conditions referred to at the commencement of this article; for if an evacuated owner lets to "someone who will pay the rates," but the rating authority continue to address their demands to him, what can he do? They may rightfully rate and look to him if the rent is payable quarterly, or less often, and a resolution which they have made contains the necessary directions: see the Rating and Valuation Act, 1925, s. 11 (1); but by *ib.*, subs. (9) "any owner who under subs. (1) pays any rate which, as between the owner and the occupier, the occupier is liable to pay, shall be entitled to be reimbursed by the occupier the amount so paid."

Our County Court Letter.

THE CONTRACTS OF OPTICIANS.

IN *Biggs* v. *Griffiths*, recently heard at Hereford County Court, the claim was for £4 10s. as the price of a pair of spectacles. The plaintiff's case was that on the 14th May, 1938, the defendant had ordered some spectacles in accordance with a prescription from the Eye Hospital. Two pairs were specified in the prescription, viz., one for general use and the other for reading and sewing. The defendant, however, preferred one pair, and she ordered one with bi-focal lenses. The order was sent the same day to the lens-makers, but the defendant wrote two days later that she had changed her mind and would have two pairs. The plaintiff replied that it was too late to correct the order, and the spectacles were duly supplied. On a complaint being made that they were unsatisfactory, the plaintiff offered to alter them—provided that a different prescription was obtained before December, 1938. Nothing more was heard until May, 1939, when it was found that no change in the prescription was required. The defendant's case was that she only ordered the bi-focal lenses on the plaintiff's advice. On being advised otherwise by a friend, the defendant had sent her daughter and an acquaintance to cancel the order the same afternoon. Neither of these persons was now available as a witness. His Honour Judge Roope Reeve, K.C., gave judgment for the plaintiff, with costs.

LIGHT WORK ON LEVEL CROSSING.

IN *Barber, Walker & Co., Ltd.* v. *Marriott*, at Nottingham County Court, the application was for termination of compensation on the ground that incapacity had ceased. The applicants were colliery owners, and their case was that the respondent had been injured in November, 1935, when his right arm was amputated. Compensation was paid at 27s. 10d. a week, but the applicants had provided the lightest possible work on the 2nd December, 1940. The duties merely consisted in guarding a level crossing, and waving a red or green flag by day and a red or green lamp by night. In cold weather a brazier was provided, but this had to be put out in the black-out. The respondent had given up this work in the cold weather, after only three days' trial, but it was still available at wages of 9s. 8d. a shift and seven shifts a week. The respondent's case was that he was not allowed inside the signal-box, and the cold weather caused a pain in the stump of his arm. He was willing to resume the work in warm weather. His Honour Judge Hildyard, K.C., held that the work on the level-crossing was not suitable, and the respondent had not acted unreasonably in giving it up. His earning capacity, however, was 30s. a week, and on that basis the compensation would be reduced to 27s. a week.

The title taken by the Master of the Rolls is Baron Greene, of Holmbury St. Mary in the County of Surrey.

To-day and Yesterday.

LEGAL CALENDAR.

11 August.—Francis Jeffrey pursued simultaneously a legal and a literary career. His exertions at the Scottish Bar eventually brought him a Judgeship in the Court of Session, but he earned more lasting fame as a critic and as editor of the *Edinburgh Review*. In 1806 the poet Moore took offence at an article on some of his works. The difference led to a challenge and the parties met on the 11th August at Chalk Farm. The whole affair was burlesque comedy. The friend from whom Moore had borrowed pistols informed the police and Bow Street runners intervened at the critical moment. At the police office it was found that Jeffrey's weapon had no bullet in it and the pair were bound over to keep the peace. This proved easy because they had taken a liking to each other on the field of action and were completely reconciled.

12 August.—On the 12th August, 1749, John Mills, one of a gang of smugglers was hanged in chains on Slindon Common for a particularly brutal murder six months after the execution of his father and brother for an equally repulsive crime. As Sussex was then full of smugglers, a rescue was feared and he was conducted to the gallows under military escort. He prayed with the parson, acknowledged his guilt and warned all young people to learn from his untimely end. After participating in the crime for which his father and brother suffered, he was one of a gang who cornered a man named Hawkins at the "Dog and Partridge" on Slindon Common, accusing him of taking two bags of tea. As he protested his innocence they stripped him and whipped and kicked him to death, throwing his body into a pond in Pasham Park. Mills was betrayed by another smuggler who had received a promise of pardon.

13 August.—On the 13th August, 1812, James Robinson, owner of a mill near Oswestry, John Hughes, landlord of the "Red Lion" and postmaster of Rye, and William Hatter, a fisherman of Rye, were convicted at the Lewes Assizes of conspiring to assist the escape of General Phillipon and Lieutenant Garnier, two French prisoners of war, who had broken parole and absconded. Lord Ellenborough told them that their crime was hardly distinguishable from high treason and condemned them to two years' imprisonment. Robinson and Hughes were also to stand in the pillory on the seashore in the neighbourhood of Rye and as near as could be within sight of the French coast that they might be viewed, as the Chief Justice said, by those enemies of their country whom they had so much befriended.

14 August.—On the 14th August, 1753, William Smith, a farmer in good circumstances, was hanged at York for murder. His mother had married a second husband, one Thomas Harper, who had two children, and these he regarded as coming between him and his prospects from his late father's estate. He bought some arsenic, on pretence that he needed it for rat killing, and mixed it with the flour for a cake, which Harper and his two children ate. After their death Smith fled to Liverpool but, tormented by his conscience, he returned, was arrested and confessed his crime.

15 August.—Eleanor Beare, who was tried at Derby on the 15th August, 1732, for trying to persuade a man called Nicholas Wilson to poison his wife, seems to have been a thoroughly evil woman. She told him he was young and could not take his liberty without fear of uneasiness with his wife, but that if he were ruled by her she would put him in a way to get rid of her. She then gave him something to put in her drink which would "do her job," not suddenly, but by degrees so that nothing would be suspected. Though Nicholas accepted the gift he went home and told his wife. Eleanor was sentenced to three years' imprisonment and ordered to stand twice in the pillory on market days.

16 August.—On the 16th August, 1746, "at the Assizes at Chelmsford, John Skinner, late an oilman and drysalter without Aldgate, was condemned for shooting his servant in 1744, for which he fled but lately returned into Essex to take possession of an estate."

17 August.—Richard Sheil, barrister, politician and dramatist, was born on the 17th August, 1791, at Drumdowney in County Kilkenny.

The Week's Personality.

When Robert Sheil was born his father was enjoying a fair fortune gained in trade with Spain. He was educated at Stonyhurst College in Lancashire, and in 1807 he entered Trinity College, Dublin, but the bankruptcy of his father in the following year threatened his studies, which he was only able to complete through the generosity of a connection of his mother. In 1811 he entered Lincoln's Inn, but his call to the Bar was delayed through his unwillingness to draw on his family's resources, so he turned to playwriting and made a success of it with "Adelaide or The Emigrants," "The Apostate," "Bellamina or The Fall of Tunis," and "Evadne." Meanwhile he had become a barrister, but a plentiful lack of briefs left him enough time on his hands, for his reputation as a dramatic writer, and assiduous attendance at the Four Courts in Dublin did little to advance him in the legal world, despite his ambition to become a great orator. Still, his experience there provided him with material for his "Sketches of the Irish Bar" in the "New Monthly Magazine." For some years he was also prominently associated with O'Connell in the agitation for Catholic emancipation. In 1830 he took silk, being one of the first Catholics to attain that distinction, and in 1831 he entered Parliament, where he took a prominent part in the debates. In 1851 he went to Italy as Minister at the Court of Tuscany, but he died suddenly four months after his arrival.

Speak up.

"If you please, sir, don't think me rude, but I can't hear a word you're saying." This remarkable observation recently addressed to the Marlborough Street magistrate by a very polite man in the dock caused something of a sensation in court, but increased the volume of the voice from the Bench. Such criticisms usually come from the opposite quarter, but Mr. Justice Gould, when he was very old, was an exception. It is said that in one case he summed up very much against the defendant, for whom the great Erskine was appearing, but his voice was so bad that what he said was only partly audible to the jury and completely unintelligible. Erskine realised this, and, sitting in the front row of the court in full view of the jury, vigorously nodded assent to all the judge said, so that they, thinking that they had been directed to find for the defendant, brought in a verdict accordingly. In modern times there has been an Official Referee, Sir Edward Pollock, whose voice had been reduced to a whisper by an operation on his vocal cords in his youth. But it was said that his whisper was a most penetrating sound, and "could be heard quite distinctly through the whole compartment of a London tube train in motion." It is generally witnesses who have to be encouraged by one device or another to speak up. Once when a young private of the Northamptonshire Regiment was failing to make himself heard, Mr. Justice Humphreys said: "Try to think that you may be a sergeant-major later on."

Confined to Court.

Recently a woman witness who had failed to attend the Divorce Court when summoned was brought up to London from her home in Gloucestershire by the tipstaff and spent the night at the Law Courts. With this and a fine of £2 12s., she was let off as a lesson not to "think the matter was not so important," if the court ever called on her again. The power of keeping a witness in like a naughty schoolchild was once extended by Mr. Baron Huddleston in a curious fashion. A cross-examination was proceeding, and the witness was giving particularly crooked answers, when the time came for the luncheon adjournment. The learned leader then made a peculiar application: "I have only to finish my cross-examination," he said, "but the witness has to be re-examined, and it would be well if he had no opportunity of communicating with the other witnesses." The judge at once assented, and the unlucky man was told that he must not leave the court for refreshment. In those distant days when disputes over the electoral lists were settled in a Revision Court held locally by a barrister appointed for that purpose, a young Revising Barrister nearly got himself into a serious scrape. One day in Wales he directed the attendant policeman to remove a tipsy fisherman, and thought no more about the matter. When he returned a week later to finish the business of the court, he was horrified to be asked by the officer what was to be done with the "prisoner," who was still in custody. He kept his head, sent for the fisherman, lectured him on his misbehaviour and told him to go away.

Notes of Cases.

CHANCERY DIVISION.

***In re* Owers, Public Trustee *v.* Death.**

Simonds, J., 13th May, 1941.

Administration—Estate includes leaseholds—Executors enter into possession and thereby become personally liable under covenants of leases—Whether entitled to have fund set aside to answer liability—Trustee Act, 1925 (15 *Geo.* 5, *c.* 19), *s.* 26.

Adjourned summons.

The testator at the date of his death possessed a number of leasehold properties. His executors had entered into possession, and by virtue of privity of estate had rendered themselves personally liable on the covenants in the leases. This summons raised the question whether they were at liberty to restrain out of the estate a fund by way of indemnity against such liabilities. The Trustee Act, 1925, s. 26 (1), provides that: "where a personal representative or trustee liable as such for—(*a*) rent" satisfies all liabilities under the lease and complies with certain conditions, he may distribute the estate and not remain personally liable in respect of any subsequent claims under the lease.

SIMONDS, J., said that, apart from the Trustee Act, s. 26, this was a case where, in accordance with the usual practice of the court, a sum would be set aside for the protection of the executors. It was said that s. 26 was a sufficient safeguard. He, the learned judge, could not take that view. That section was intended to

deal only with the liability of executors as such, and not with the case where by reason of privity of estate the executors had incurred a double liability, namely: their liability as executors and their personal liability by reason of their entering into possession of the testator's leaseholds. Accordingly, s. 26 did not provide sufficient protection, and it was necessary to follow the old practice of the court and to decree that a sufficient sum be set aside for their protection.

COUNSEL: *Wilfrid Hunt; H. Wynn Parry, K.C.*, and *Russell Gilbert.*

SOLICITORS: *Merton Jones, Lewsey & Jefferies; Vandercom, Stanton & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Whigham *v.* Inland Revenue Commissioners.

Lawrence, J. 9th May, 1941.

Revenue—Sur-tax—Settlement—Trust in favour of settlor's children—Defeasible in respect of any child's doing certain thing—No reverter to settlor—Income of trust fund not to be deemed settlor's income—Finance Act, 1922 (12 & 13 *Geo.* 5, *c.* 17), *s.* 20 (1) (*c*).

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

An assessment to sur-tax on the appellant was computed by including in his income the income arising in the material years from property comprised in a settlement dated the 14th July, 1925, made by the appellant in favour of his children. The settlement provided, *inter alia*, by cl. 6 as follows: "If any child of the settlor should before becoming absolutely entitled in possession to a share of the trust fund cease to be a British subject or attempt to alien charge or anticipate the same . . . or do . . . any other act . . . whereby if such share were payable to him . . . absolutely he . . . would be deprived of the right to receive the same . . . the trust . . . in his . . . favour shall . . . cease . . . and he . . . shall be deemed . . . to have died under the age of twenty-one, but without prejudice to any income or capital which the trustee may previously have made to or for him . . . in respect of such share." The fund was held on trust for any child or children attaining the age of twenty-five years or living twenty-one years from the testator's death. If, however, a child died before attaining a vested interest in the fund there was a gift over in favour of any surviving child of his or a power of appointment in favour of any husband or wife surviving the deceased child of the settlor. It was contended for the appellant, in objecting to the inclusion of income from the settled fund in his income, that if a child forfeited his interest under cl. 6 no beneficial interest would accrue to the appellant and that he would have no power of appointment, that fact distinguishing the case from *Levitt* v. *Inland Revenue Commissioners* (1932), 17 T.C. 719, which in any event was wrongly decided; and that the income in question, therefore, should not be treated as that of the settlor under s. 20 (1) (*c*) of the Finance Act, 1922. The Crown contended that the case cited concluded the matter in its favour. The Commissioners upheld that view, and the taxpayer now appealed.

LAWRENCE, J., said that the Crown's argument was that cl. 6 brought the settlement within s. 20 (1) (*c*), because as a result of it income was payable to the children for some period less than their lives, and that it was not protected by the second proviso. The Crown conceded that *Levitt's case, supra*, was distinguishable on the ground of the power of appointment there reserved to the settlor in a certain event, whereas here the property would not revert to the settlor in any event. It was argued, however, that that distinction had not been referred to in *Levitt's case*, and that it was irrelevant in law. The appellant contended that all the subsections of s. 20 impliedly contemplated that the income deemed to be that of the settlor should be capable of ultimate enjoyment by the settlor or his wife, and he relied on *Watson's Trustees* v. *Wiggins* [1933] 1 K.B. 245; [1934] A.C. 264; 77 SOL. J. 157, where it was held that a settlement on a child for life, with a power of revocation exercisable with the consent of one of five persons, was not a settlement for a period less than the life of the child, but the distinction was insisted on between a settlement until a certain event and a settlement which might be defeated in a certain event. Rowlatt, J., and Romer, L.J., in effect there said that, apart from the settlor's right to revoke, the fact that the disposition of the settlement itself was not until the bankruptcy of the settlor, but in the event of his bankruptcy, prevented the application of s. 20. So here the disposition was for the lives of all the settlor's children and not until they ceased to be British subjects. Clause 6 merely provided for defeasance if any child should cease to be a British subject before becoming absolutely entitled. When the Court of Session decided *Levitt's case, supra, Watson's Trustees* v. *Wiggins, supra*, had only just been decided by Rowlatt, J., and only one of the members of the court noticed it. He (Lawrence, J.) held that he should follow *Watson's Trustees* v. *Wiggins, supra*, rather than *Levitt's case, supra*, and the appeal must be allowed. He expressed no opinion on the contention that s. 20 only contemplated cases in which the disposition provided that the income should revert to the settlor.

COUNSEL: *Scrimgeour; The Attorney-General* (Sir Donald Somervell, K.C.) and *R. P. Hills.*

SOLICITORS: *Linklater & Paines; The Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

War Legislation.

STATUTORY RULES AND ORDERS, 1941.

No. 1102. **Allied Forces** (Application of Acts to Colonies, etc.) (No. 2) Order in Council, July 18.

E.P. 1129. **Barley** (Control and Maximum Prices) Order, 1940. Amendment Order, July 30.

E.P. 1090-1093. (As one document). **Consumer Rationing** Order, 1941, and Limitation of Supplies (Woven Textiles) (No. 7) Order, 1941. General Licences, July 24 and July 25.

No. 1105. **Contributory Pensions** (Special Voluntary Contributors) Amendment Regulations, July 2.

E.P. 1076. **Control of Chrome,** Magnesite and Wolfram (No. 2) Order, July 24.

E.P. 1118. **Control of the Cotton Industry** (No. 22) Order, July 29.

E.P. 1124. **Defence** (Finance) (Definition of Sterling Area) (Amendment) Order, July 31.

E.P. 1087. Defence (General) Regulations, 1939. Order in Council, July 24, adding Regulations 32AB and amending Regulation 18.

E.P. 1088. Defence (General) Regulations, 1939. Order in Council, July 24, adding Regulation 18E.

E.P. 1133. Defence (National Fire Service) Regulations, 1941. Order in Council, August 5.

E.P. 1114. **Eggs** (Control and Prices) (No. 2) Order, 1941. Amendment Order, July 26.

E.P. 1086 **Emergency Powers** (Defence) Act, 1939, as amended by subsequent enactments. Order in Council, July 24.

E.P. 1089. Emergency Powers (Defence) Road Vehicles and Drivers (Amendment) Order, July 17.

No. 1072. **Export of Goods** (Control) (No. 24) Order, July 29.

No. 1103. Export of Goods (Control) (No. 25) Order, July 29.

E.P. 1084. **Feeding** Stuffs (Rationing) Order, 1941. Order, July 24, amending the General Licence and Directions, dated Mry 3.

E.P. 1082. Feeding Stuffs (Rationing) Order, 1941. Amendment Order, July 24.

E.P. 1803. Feeding Stuffs (Rationing) Order, 1941. Directions, July 24.

E.P. 1080. Feeding Stuffs (Maximum Prices) Order, 1941. Amendment Order, July 24.

No. 1112. **Financial Powers** (U.S.A. Securities) Regulations, July 29.

E.P. 1078. **Food** (Current Prices) Order, 1941. Amendment Order, July 24.

E.P. 1128. **Home Grown Dredge Corn** (Control and Maximum Prices) Order, 1940. Amendment Order, July 30.

No. 1120. **Home Grown Onions** (1941 Crop) (Control) Order, July 28.

E.P. 1085. **Imported Canned Meat** (Maximum Prices) Order, 1941. Amendment Order, July 24.

No. 1115. **Land Drainage Grants** (Further Postponement of Prescribed Date) Order, April 9.

E.P. 1119. **Limitation of Supplies** (Miscellaneous) (No. 11) Order, 1941. General Licence, July 26.

E.P. 1058. Limitation of Supplies (Miscellaneous) (No. 11) Order. 1941. Licences and Direction, July 19.

No. 1134. **National Fire Service** (General) Regulations, August 5.

E.P. 1100. **Location of Industry** (Restricion) Order, July 26.

E.P. 1101. Location of Industry (Restriction) Order, 1941. General Licence, July 26.

E.P. 1130. **Oats** (Control and Maximum Prices) Order, 1940. Amendment Order, July 30.

No. 1122. **Police** Regulations, July 21.

No. 1123. Police (Women) Regulations, July 21.

E.P. 1107. **Rationing Order,** 1939, and the Preserves (Rationing) Order, 1941. Amendment Order, July 26.

No. 1068/L.22. **Supreme Court** Fees (Amendment) Order, July 22.

No. 1116. **Trading with the Enemy** (East Africa) Order, July 29.

No. 1021. Trading with the Enemy (Specified Persons) (Amendment) (No. 11) Order, July 24.

No. 1071. Trading with the Enemy (Specified Persons) (Amendment) (No. 12) Order, July 29.

No. 1139. **U.S.A. Securities** (Placing at Treasury Disposal) Order, August 5.

Mr. John G. Winant, the American Ambassador, has been elected an Honorary Master of the Bench of the Inner Temple.